

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of )  
)  
)

Petition For Rulemaking Of The )  
Telecommunications Resellers Association )  
To Eliminate Comity-Based )  
Enforcement of Other Nations' )  
Prohibitions Against The Uncompleted Call )  
Signaling Configuration Of International )  
Call-Back Service )  
)  
)

RM-9249

**REPLY COMMENTS OF**  
**THE PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, INC.**

The Philippine Long Distance Telephone Company, Inc. ("PLDT") hereby submits its reply comments in response to the Petition for Rulemaking filed by the Telecommunications Resellers Association ("Petition"). The Petition seeks to reverse the "Call-Back Ban," which is the policy of the Federal Communications Commission ("FCC" or "Commission") banning U.S. carriers from offering international call-back using uncompleted call signaling to countries where it explicitly is prohibited. PLDT joins the vast majority of commenting parties opposing the Petition.

In weighing whether to grant the Petition, the Commission should be aware that reversal of the Call-Back Ban would result in the FCC licensing U.S. carriers to engage in violations of foreign law. Such action would be contrary to the U.S. Government's ITU

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List A B C D E I B

responsibilities<sup>1/</sup> and it could well trigger retaliatory authorizations by foreign governments for their carriers to violate U.S. laws and policies. In addition, reneging on its commitment to prohibit at least a limited set of unlawful call-back operations by U.S. carriers would undermine the FCC's international credibility as well as its efforts to foster greater global competition.<sup>2/</sup> Such consequences would be particularly unfortunate given that proponents of the Petition fail to proffer any legitimate justification for the FCC to sanction their violation of foreign law.

If the FCC nevertheless reverses the Call-Back Ban, it should make clear that it is acting only on a prospective basis. Contrary to possible implications of Ursus Telecom Corporation's proposals,<sup>3/</sup> any new rule or policy created in this proceeding cannot affect actions the FCC already has taken to enforce the Call-Back Ban.<sup>4/</sup> In particular, any attempt to apply a reversal of the Call-Back Ban to such enforcement proceedings would constitute unlawful retroactive rulemaking because it would be "altering the past legal

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<sup>1/</sup> See, e.g., Comments of the Costa Rican Institute of Electricity ("ICE") at 12-13 and Comments of Cable and Wireless at 6-7 (noting that reversal of the Call-Back Ban would be inconsistent with the ITU's 1994 Kyoto Declaration which requires ITU member countries -- including the U.S. -- (1) to take "appropriate action within the constraints of national law" to prevent a carrier subject to its jurisdiction from "infring[ing] on the national law of a member state" and (2) to "ensure that national laws and regulations of member countries are respected.")

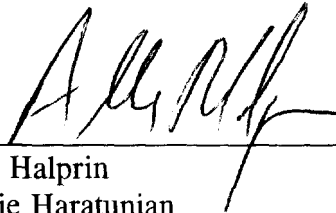
<sup>2/</sup> See, e.g., Comments of PLDT at 2-3; Comments of ICE at 13-14; Comments of the Republic of Panama at 4,8.

<sup>3/</sup> See, Comments of Ursus Telecom Corporation at 3.

<sup>4/</sup> To date, the FCC has issued rulings in three complaint proceedings finding carriers liable for violating the Call-Back Ban. *Philippine Long Distance Telephone Company v. USA Link, L.P. d/b/a USA Global Link*, Memorandum Opinion and Order, 12 FCC Rcd. 12010 (1997), application for review pending; *Philippine Long Distance Telephone Company v. International Telecom, Ltd. d/b/a Kallback Direct*, Memorandum Opinion and Order, 12 FCC Rcd. 15001 (1997); *Philippine Long Distance Telephone Company v. DialBack USA*, Memorandum Opinion and Order, 12 FCC Rcd. 12023 (1997).

consequences of [the defendants'] past actions" and would be "chang[ing] what the law was in the past."<sup>5/</sup> Absent express statutory authority, which does not exist here, such retroactive rulemaking would be *ultra vires* and inconsistent with the Administrative Procedures Act.<sup>6/</sup>

Respectfully submitted,



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May 22, 1998

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<sup>5/</sup> See, e.g., *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 219 and 220 (1988)(Scalia, J. concurring).

<sup>6/</sup> See, e.g., *id.*, at 208-209 and 216-17 (Scalia, J. concurring).

**CERTIFICATE OF SERVICE**

I, Alva O. Roane, hereby certify that on the 22nd day of May, 1998, a true copy of the foregoing Reply Comments of the Philippine Long Distance Telephone Company, Inc. in RM-9249 were sent first-class mail, to the following:

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